reserving a seat was justifiable and convenient, and that reasonable force may be used to eject an intruder. It has not been possible to obtain a full report of the case, so that the legal grounds upon which the court proceeded must remain a matter of conjecture. Certainly it is difficult to find any interest or property in the holder of a seat upon which to base his right of recaption. It may be suggested, however, that a passenger in a train has been given the custody of his seat by the railroad company. He is entitled by his contract of carriage to some seat, and although the company could compel him to change it, still, as against all others, the law should permit him to maintain the custody of a seat he has rightfully taken, and to eject any one that usurps it. The servant to whom a master intrusts a horse, has not possession of it, yet surely he could lawfully recapture the horse from a thief. A lodger cannot be said to have possession of the meal placed before him, yet who would deny him the right to retake from his grasping neighbor his knife and fork, or his turkey? And even assuming that the holder of a reserved seat in a theatre has no right of property, who can doubt that he would have a right to eject an intruder? There is little or no decided authority for such a view, but it is submitted that the case is an example of a right so universally recognized by the good sense of the public, that it has not hitherto come up in a court of law.

The decision that reasonable force may be used in retaking the seat appears, perhaps, inexpedient as tending to produce breaches of the peace (see N. Y. L. J., Jan. 19, 1898); yet in ordinary cases of recaption the law permits the use of reasonable force, short of wounding or the use of dangerous weapons, in regaining momentarily interrupted possession. *Commonwealth* v. *Donahue,* 148 Mass. 529.

GREAT ENGLISH JUDGES. — COMMON PLEAS. — This last of a series of notes the object of which has been to individualize, in the slight degree that is possible in such narrow limits, certain names familiar to those acquainted with the English Reports, does not find in the Court of Common Pleas so rich a field for selection as in the Chancellorship, the King's Bench, or the Exchequer. Coke, and Sir Matthew Hale, to be sure, sat in the Common Pleas, but during a more modern period this court has fewer great names in the list of its judges than the others.

From 1829 to 1846 the Chief Justice of the Common Pleas was Sir Nicolas Conyngham Tindal. He was born at Chelmsford in 1776; educated at Trinity College, Cambridge, where, after a highly creditable career, he was made a fellow of his college; studied law at Lincoln's Inn, and first took up the practice of special pleading. In this branch of law he became very proficient, and attracted so considerable a business that in 1809 he was able to be called to the bar, and to give up his fellowship by marrying. At the bar he soon had plenty of employment. Many pupils, too, resorted to his chambers, among them two young men who later became known in the legal world as Lord Brougham, and Baron Parke. As a lawyer Tindal was distinguished rather for the logical skill with which he argued, due no doubt to his study of special pleading, than for any natural eloquence or rhetorical force. Perhaps the two most interesting events of his career at the bar were his share in the defence of Queen Caroline, and his conduct of the appellee's case in *Ashford* v. *Thornton,* 1 Barn. & Ald. 405. In that case, which was an appeal of

murder, Tindal in behalf of his client demanded wager of battle, and convinced the court that as the law stood they had no option but to support the appellee's refusal to put himself on the country. By this ingenious use of the old law Tindal saved his client; for when Thornton was indicted by the Crown he was able to plead *autrefois acquit*, and was immediately dismissed. In 1829 Tindal was made Chief Justice of the Common Pleas, having been Solicitor-General, and for several years a member of Parliament. During the seventeen years he presided over this court he was remarkable for his urbane and dignified manners, his invariable good temper, and his sound exposition of the law. As a judge he was almost universally looked up to and respected. Socially he seems to have inspired those who knew him with a strong and respectful regard. His usually grave demeanor made familiarity impossible, but his courtesy and amiable disposition engaged people's affections. He died in 1846.

Sir William Henry Maule was a judge of the Court of Common Pleas from 1839 to 1855. He was educated at Trinity College, Cambridge, and was senior wrangler in the mathematical tripos and fellow of the college. His favorite study was mathematics, in which he was singularly proficient, being offered a professorship in that science at Haileybury College, which he refused. In 1814 he was called to the bar, where his advancement, though not rapid, was steady and sure. He had a great reputation as a commercial lawyer, being an acknowledged authority on questions of maritime insurance. He was king's counsel, counsel to the Bank of England, and a Liberal member of Parliament. In 1839 he was made baron of the Exchequer and knighted, and the same year was transferred to the Common Pleas. He resigned from that court in 1855, but was shortly after sworn of the Privy Council, and served on the Judicial Committee till his death in 1858. Maule was one of the best judges of the Common Pleas. His thorough knowledge of law was reinforced by sound common sense, and his ingenuity for defeating technicalities was happily a marked characteristic. His judgments are excellent examples of proper judicial opinions, — clear, pithy, and enriched with well-chosen illustrations. Both at the bar and on the bench Maule was famous for his ironical humor. This habit of mind it is said sometimes led to unlooked-for results at Nisi Prius trials of criminals. After the judge's summing up, the jury in their deliberations frequently mistook the ironical language they had listened to as the serious opinion of the court, and returned a verdict precisely opposite to what was looked for and desired. Socially Maule was distinguished for refined pleasantry and cordiality of friendship.

A MAXIM MISUSED. — Fallacy shields itself behind many a Latin maxim. "*Ignorantia juris non excusat;*" this maxim has done its share in confusing the law of quasi-contracts. Its original meaning was that one person cannot excuse wrong done to another by showing that he acted in ignorance of the law. As misapplied in *Bilbie* v. *Lumley*, 2 East, 469, the words have had the additional meaning attributed to them that a plaintiff who brings action to recover money paid under mistake of law cannot recover. Founded on a misconception, this doctrine has dominated English law, and is to-day received in most American States. When an illegal tax has been paid under belief that it is legal, and the payer demands repayment of his money, the courts, as in the recent case of *Pomeroy* v. *Board of Commissioners of Graham County*, 50 Pac. Rep. 1094